

City of Seattle



OFFICE OF HEARING EXAMINER

2002

ANNUAL REPORT

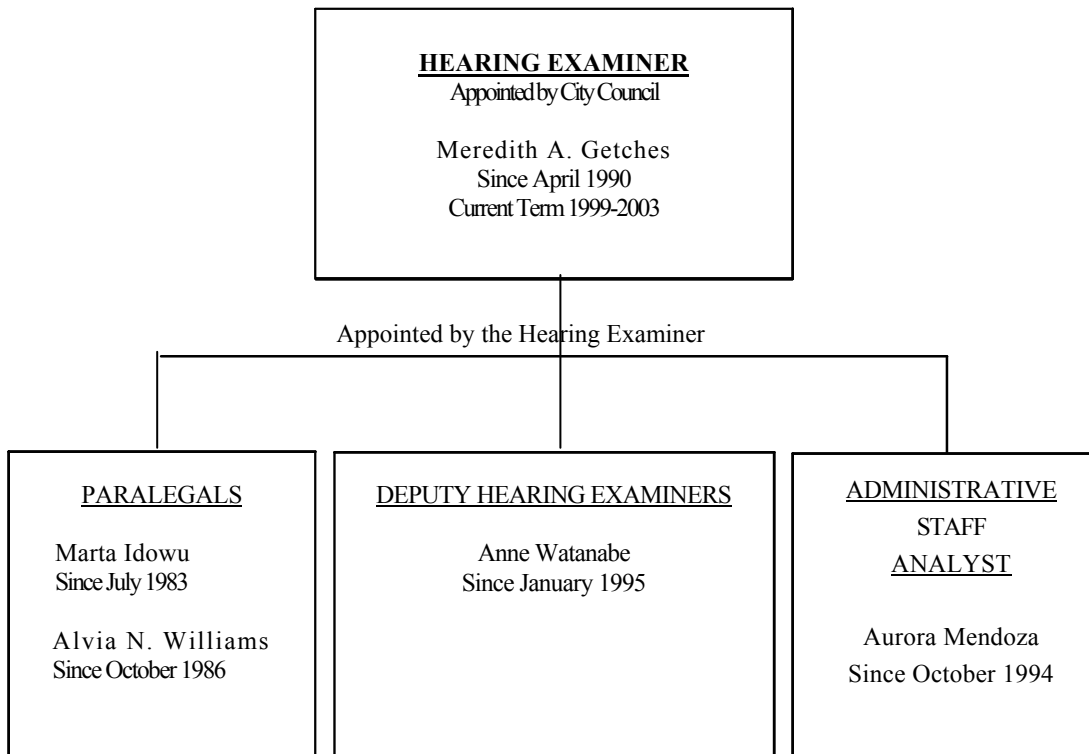
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2002
City of Seattle
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Mission and Authority

The mission of the Office of Hearing Examiner is to conduct fair and impartial administrative hearings in matters where jurisdiction has been granted by the City's Code, and to issue well-reasoned, accurate, readable decisions and recommendations in a timely manner consistent with applicable ordinances.

An administrative appeal is a quasi judicial process. That is, the Hearing Examiner's decision must be made by applying existing law (i.e., Seattle Municipal Code) to the specific instance appealed. Unlike a legislative process where laws and policies are created through a political process, quasi judicial decisions are limited to the application of the laws and policies already in place. This application of existing law to specific instances requires procedural safeguards for those whose rights are at issue.

The position of Hearing Examiner is established in the Seattle Municipal Code and the Hearing Examiner is appointed by the City Council to serve renewable, four-year terms. The Hearing Examiner is responsible for all the functions of the Office and is authorized to appoint Deputy Examiners, temporary (*pro tempore*) examiners, and other staff. See the inside front cover for an organization chart and current staff.

Jurisdictions

The Office of Hearing Examiner is a separate office created under Title 3 of the Seattle Municipal Code. Before this Office was created in 1973, some appeals of administrative decisions were heard by the City Council, others went directly to court. The Office of Hearing Examiner now provides Seattle's forum for reviewing questions of administrative law as to whether City code provisions have been properly applied. Not every decision of every department can be appealed to the Hearing Examiner. The Hearing Examiner can only hear and decide appeals in cases where the City's Municipal Code has given authority to do so.

For City Council land use actions (e.g., rezones, Major Institution Master Plans, etc.), the Hearing Examiner holds a public hearing for the Council, gathers information to establish the record, and forwards the record and a recommendation to the City Council for it to use in making decisions regarding:

- Council Conditional Uses
- Rezone proposals
- Major institution master plans
- Planned unit developments
- Landmarks controls and incentives

The Seattle Municipal Code gives the Hearing Examiner the authority to hold hearings and decide the outcome of appeals regarding a broad variety of decisions including those listed below (see pages 7 and 8 for a complete listing).

- Master Use Permits: Variances, Conditional Uses, Short Plats, Design Review, etc.
- Land Use Code Interpretations
- Environmental Threshold Determinations, SEPA conditioning, EIS Adequacy
- Tenant Relocation Assistance Eligibility Determinations
- Stop Work Orders
- Certificates of Approval for Landmarks and Special District (e.g., Pioneer Square, Pike Place Market, International District, etc.)
- Employment and Housing Discrimination complaints
- Health Code violations (noise, radio frequency radiation, etc.)
- Business and Occupation Tax assessments
- City License suspensions (taxi, adult entertainment, etc.)
- Vicious Animal determinations
- Graffiti Nuisance enforcement
- Subdivision approval
- Land Use Citations appeals
- Civil Service appeals
- Street Use Violation appeals (added in 2003)
- All Ages Dance Ordinance - License appeals (added in 2002)

Ensuring Accessibility

An appeal hearing resembles an informal court proceeding. Constitutionally guaranteed "due process" requires that the rights of all the parties be carefully observed. The hearing format is structured to provide a fair opportunity for each party to participate, and it also acknowledges the seriousness of the matters appealed for those involved.

To help ensure that the process is "user friendly", while at the same time protecting the rights of parties and fulfilling legal requirements, the Office of Hearing Examiner utilizes various measures to demystify the process and keep it understandable. Examples include: a "Citizen Guide" booklet explaining the hearing process; fill-in-the-blanks appeal forms; and, an appeal information letter in addition to the required notice of hearing.

The Hearing Examiner's website at [*www.cityofseattle.net/examiner*](http://www.cityofseattle.net/examiner) includes copies of the Hearing Examiner Rules, the "Citizen Guide", the appeal forms, the most recent Annual Report, and a schedule of upcoming hearings. In 1999, we began posting current decisions on our homepage. During 2002, we achieved the goal of getting decisions back through 1990 added to this searchable database.

2002 Caseload

Cases Filed: A total of 336 cases were filed in 2002. The number of Master Use Permit (MUP) appeals filed (53) was somewhat greater than the number filed in 2001 (41). This was consistent with the average of 48 cases filed per year between 1997 and 2001. MUP appeals still remain the most complex matters as they often involve multiple parties, complicated facts, substantial controversy, several days for hearings and several more for decision preparation.

The five SEPA-only appeals (i.e., those not associated with a MUP) equaled the 2001 total of four, but was substantially lower than the recent annual average of 10. The number of Council actions (e.g., rezones, council conditional uses, etc.) filed in 2002 (9) was double the number filed in 2001 (4) and similar to the five year average of 8.

The number of licensing appeals filed in 2002 was 12 (all involved Adult Entertainment licenses). This number represents a sharp drop from the 72 appeals filed in 2001. Appeals from B&O tax assessments (5) were also down sharply from the number of filings in 2001 (17) and the average of the preceding five year period (18). There were three special district appeals, compared to the average of 5 filed in the preceding 5-year period.

The citation enforcement jurisdiction, which began in August 1999, saw the most filings (208) of any jurisdiction (compared to 236 citation cases filed in 2001).

CASES FILED IN 2002

	2002	2001	2000	1999	1998	1997	Average 1997-2001
MASTER USE PERMITS (MUP)	53	41	40	49	53	56	48
LAND USE CODE INTERPRETATIONS	1	2	3	5	2	10	4
SEPA-only Appeals (non MUP)	5	3	28	10	6	4	10
B&O TAX ASSESSMENTS	5	17	13	8	24	28	18
LICENSING (taxis, adult entertainment, etc.)	12	72	44	44	50	22	46
LANDMARKS/SPEC DIST. (Pioneer Sq., Pike Mrkt, ID, etc.)	3	8	7	5	3	4	5
OTHER JURISDICTIONS (Discrimination, Nuisance, etc.)	40	19	38	50	23	11	28
COUNCIL RECOMMENDATIONS	9	4	8	10	12	6	8
TOTALS WITHOUT CITATIONS	128	166	181	181	173	141	168
CITATION ENFORCEMENT ACTIONS	208	236	320	74	N/A	N/A	210
TOTALS	336	402	501	255	173	141	294

2002 Hearing Activity

Decisions Rendered: In 2002, 135 decisions were issued after hearing. The greatest number of decisions issued in one jurisdiction was 66. These were appeals of land use enforcement citations. Of the 69 other decisions issued, 33 involved land use or environmental appeals, 14 were license decisions, 3 involved special districts, 1 was a B&O tax assessment, 2 were concerned with eligibility for tenant relocation assistance, and 7 were in various other jurisdictions. There were 9 recommendations to City Council on land use actions (primarily major institution master plans and rezone petitions).

The 31 Master Use Permit appeal decisions issued in 2002 was below the average of 34 during the preceding 5-year period. There were only two Land Use Code Interpretation appeals decided this year (compared to the recent 5-year average of 4 per year). There were 3 SEPA-only appeals decided (i.e., SEPA determinations not involving master use permits or where a department other than DCLU is the lead agency). This number kept pace with the average of 4 per year during the 5-year period between 1997 and 2001.

The one B&O Tax appeal decided this year was well below the recent 5-year average of five. Licensing appeal decisions (14) were also well below the number decided in 2001 (28). The number of decisions rendered on appeals of Tenant Relocation Assistance Eligibility determinations (2) was much lower than the number decided in 2001 (8).

DECISIONS RENDERED AFTER HEARING

	2002	2001	2000	1999	1998	1997	Average 1997-2001
MASTER USE PERMITS (MUP)	31	24	33	40	35	38	34
LAND USE CODE INTERPRETATIONS	2	0	5	2	1	5	3
SEPA-only Appeals (non MUP)	2	2	11	5	2	5	5
B&O TAX ASSESSMENTS	1	5	3	1	11	7	5
LICENSING (taxi, adult entertainment, etc.)	14	28	28	21	29	15	24
LANDMARKS/SPEC DIST. (Pioneer Sq., Pike Mkt, ID, etc.)	3	7	2	2	2	4	3
OTHER JURISDICTIONS (Discrimination, Nuisance, etc.)	7	12	15	34	6	8	15
COUNCIL RECOMMENDATIONS	9	3	9	5	11	8	7
TOTALS WITHOUT' CITATIONS_	69		106	110	97	90	77
CITATION ENFORCEMENT ACTIONS	66	95	97	23	N/A	N/A	N/A
TOTALS	135	176	203	133	97	90	140

Case Highlights

Every year includes cases that are noteworthy, either because of a high level of controversy or because they present important issues in the application of the Municipal Code. This year was no exception and the brief case descriptions that follow highlight some of those cases. Decisions rendered in 2002 can be found at: www.cityofseattle.net/examiner/.

- The hearing on the proposed UW **Major Institution Master Plan** (2002-2012) lasted several days. The Hearing Examiner prepared an extensive report and recommendation for the City Council regarding 8.3-million sq. ft. of potential development and increase in campus population totaling approximately 9,000. Traffic congestion, rental housing stock, and expansion of the golf driving range were the major neighborhood concerns.
- Several neighborhood property owners in the Denny Triangle neighborhood appealed DCLU's DNS for a residence proposed by the **Downtown Emergency Service Center** for chronic public inebriates. Evidence supported the DCLU decision that no significant adverse environmental impacts were likely.
- The Hearing Examiner affirmed the Pike Place Market Historical Commission's denial of a certificate of approval for an expansion proposed by **Sur la Table**, the popular kitchenware store, into the Garden Center space. The Commission's decision was affirmed as it reasonably concluded the nearly tripling in size could not be approved.
- The application of chef **Cathy Casey** to establish a take-out food business in the Pike Place Market was appealed by neighboring businesses concerned that crowds would block access to their businesses. The Commission's decision to approve was affirmed because the application met the Market Guidelines for approval.
- Seattle Housing Authority's **Holly Park Phase II** (143 townhouse units) and **Holly Park Phase III** (430 single-family and multifamily residential units) subdivisions for redevelopment of old Holly Park were approved with numerous conditions. (The basic subdivision and redevelopment plans were reviewed and approved in 1999.)
- The adequacy of the Parks Department's EIS on the **Woodland Park Zoo Master Plan** was challenged by neighbors concerned about traffic and parking. The EIS was found inadequate as it failed to include evaluation of traffic and parking impacts inherent in the Plan's increased facilities for non-animal related activities.
- The renovation and expansion of the **Salvation Army Community Center** in the Highland Park neighborhood close to White Center was challenged by neighbors as not meeting the criteria for conditional uses and adding too much height directly adjacent to single-family properties. The evidence at hearing showed that the criteria were met (although not expressly stated in the Director's decision) and the plans were ordered modified so as to not increase the building height at the property line.

2002
CASE ACTIVITY BY JURISDICTION

	CASELOAD			Citations Paid: No Appeal	DISPOSITION			
	Pending as year began	Filed during 2002	Total Caseload		Dismissed	Decisions Issued In 2002	Default	Pending at end of year
B& O TAXES	12	5	17		7	1		9
BLDG. & HOUSING CODE	0	3	3		3	0		0
CABLE TV	0	1	1		1	0		0
CIVIL SERVICE	0	6	6		1	0		5
CITATIONS (DCLU)	17	208	225	9	16	66	104	30
COUNCIL RECOMMENDATION	3	9	12		0	9		3
DISCRIMINATION	1	3				2		0
ETHICS	0	0	0		0	0		0
FLOATING HOMES	0	1	1		1	0		0
GRADING/DRAINAGE	1	0	1		0	0		1
HEALTH CODE VIOLATION	0	0	0		0	0		0
INTERPRETATION	3		4		1	2		1
LANDMARKS	0	0	0		0	0		0
LICENSING	8	12	20		6	14		0
MUP	8	53	61		21	31		9
PUBLIC NUISANCE	2	17	19		15	3		1
SEPA	0	5	5		2	2		1
SDOT CITATIONS	0	6	6	1	0	0		5
SPEC REV DIST	0	3	3		0	3		0
STOP WORK	0	0	0		0	0		0
SUAC/SCHOOL DD	0	0	0		0	0		0
TENANT RELOCATION	1	3	4		2	2		0
WMBE	0	0	0		0	0		0
BID PROTEST	0	0	0		0	0		0
TOTAL	56	336	392	10	78	135	104	65

HEARING EXAMINER JURISDICTIONS

LAND USE & ENVIRONMENTAL [Administered by Department of Construction & Land Use]

Appeals:

- Downtown Housing Maintenance appeals (SMC 22.220.140)

- Environmental Determinations [administered by any City dept. as lead agency]

 - Determinations of Non-Significance(DNS)/ No EIS required (SMC 25.05.340)

 - Determinations of EIS Adequacy (SMC 25.05, Subchp.

- IV) Fire & Safety Standards Citations (SMC 22.207.010 &

- .012) Land Use Code Citations (SMC 23.91.010 & .012) Land

- Use Code Interpretations (SMC 23.88.020)

- Master Use Permit [Type II] land use decisions (SMC 23.76.022):

 - Administrative Conditional Uses

 - Consistency with Planned Action Ordinance

 - Design Review

 - Establishing Light Rail Transit

 - Facilities Major Phased Developments

 - Northgate Area General Development

 - Plan Short Subdivisions

 - Special Exceptions

 - Street Use Decisions

 - Temporary Uses

 - Variances

- Building Unfit for Habitation (SMC 22.208.050)

- Environmentally Critical Areas Reasonable Use Exceptions (SMC 25.09.300)

- SEPA Conditions in MUP decisions (SMC 25.05.660) Housing & Building

- Maintenance Code violations (SMC 22.208.050) Pioneer Square Minimum

- Maintenance violations (SMC 25.28.300) Relocation Assistance: City action

- causes displacement (SMC 20.84.160) Stop Work Orders (SMC 23.76.034)

- Stormwater, Grading & Drainage exceptions/enforcement (SMC 22.808.040)

- Subdivisions (SMC 23.76.052 and 23.22) [DCLU recommendation; Hearing Examiner decision]

- Tenant Relocation Assistance Eligibility Determinations (SMC 22.210.150)

- Recommendations to City Council on Type IV land use decisions (SMC

- 23.76.036): Council Conditional Uses

 - Downtown Planned Community

 - Developments Major Institution Master Plans

 - Public Facilities

 - Rezone Petitions

SCHOOL REUSE & DEPARTURES [Administered by Department of Neighborhoods]

- School Reuse/SUAC (SMC 23.78.014) within MUP decision School Development

- Standard Departures (SMC 23.79.012) within MUP decision

CIVIL RIGHTS COMPLAINTS [Administered by the Office for Civil Rights]

- Employment Discrimination Complaints (SMC 14.04.170) Fair

- Housing/Business Practices (SMC 14.08.170)

CONTRACTUAL RELATIONS [Administered by the Executive Administration]

- Bid Award Protests (SMC 3.18.150) [Recommendation to ESD Director] Boost

- Program Sanctions (SMC 20.49.100)

- WMBE Sanctions (SMC 20.46A.190)

PUBLIC NUISANCE

- Graffiti Nuisance Violations (SMC 10.07.050) [Administered by Seattle Public Utilities]

- Public Nuisance Abatements (SMC 10.09.100) [Administered by Seattle Police Department]

LANDMARKS AND SPECIAL DISTRICTS [Administered by the Department of Neighborhoods] Certificates of Approval for Designated Landmarks (SMC 25.12.740)
Landmark Controls & Incentives (SMC 25.12.530) [Recommendations to City Council]
Landmarks Code Interpretations (SMC 5.12.845)
Special Review Districts' Certificates of Approval and Code Interpretations Pioneer Square Historical District (SMC 23.66.030)
International District (SMC 23.66.030)
Pike Place Market Historical District (SMC 25.24.080 & SMC 25.24.085) Harvard Belmont Landmark District (SMC 25.22.130 & SMC 25.22.135) Ballard Avenue Landmark District (SMC 25.16.110 & SMC 25.16.115) Columbia City Landmark District (SMC 25.20.110 & SMC 25.20.115)

HEALTH CODE VIOLATIONS [Administered by Seattle-King County Public Health]
Health Code Permit actions (SMC 10.01.220)
Noise Ordinance variance appeals (SMC 25.08) [Administered by DCLU]
Radiofrequency Radiation Ordinance violations (SMC 25.10) [Administered by DCLU]

CITY TAXES AND LICENSES [Administered by the Executive Administration]

Revenue & Consumer Affairs:

Admission Tax Exemptions (SMC 5.40.085) Bond Claims (SMC 6.2.2.290)
Business and Occupation Tax assessments (SMC 5.44.230) Horse Drawn Carriage Licenses (SMC 6.315.430) License suspensions & revocations (SMC 6.02.080)
Adult Entertainment (SMC 6.270)
For-Hire Vehicles & Drivers (SMC 6.310.635)
Pawnshops (SMC 6.288)
Panorama and Peepshows (SMC 6.42.080) Unit Pricing (SMC 7.12.090)

Animal Control:

Animal License Denials (SMC 9.25.120)
Determinations of Viciousness/Order of Humane Disposal (SMC 9.25.036)

CABLE COMMUNICATIONS - Administered by the Office of Cable Communications Franchise Termination (SMC 21.60.180) Rates and Charges Increases (SMC 21.60.3 10)

MISCELLANEOUS APPEAL JURISDICTIONS

Ethics Code Violations (SMC 3.70.100) [Delegation from Ethics & Elections Commission]
Civil Service Appeals (SMC 4.04.250) [Delegation from Civil Service Commission] LID Assessment Rolls (SMC 20.04.090) [Administered by Dept. of Transportation] Petitions For Review of Floating Home Moorage Fee Increase (SMC 7.20.080)
Side Sewer Registration Cancellation (SMC 21.16.065) [Administered by Seattle Public Utilities]
Property Tax Exemption Elimination (SMC 5.72.110) [Administered by Office of Housing]
1st and 2nd Avenue Business District Assessments (Ordinance 116021)
Street Use Ordinance Violations (SMC 15.17, etc.) [Administered by Dept. of Transportation]
All Ages Ordinance appeals (SMC 6.29.180) [Administered by Executive Administration]